

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5976 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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RANJANBEN BHOGILAL DESAI & 2 - Petitioner(s)

Versus

VINUBHAI MAGANBHAI DESAI - Respondent(s)

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Appearance :

MR MRUGEN K PUROHIT for the petitioners

MR JA ADESHRA for Respondent:1

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 08/08/2007

ORAL JUDGMENT

1. Rule. Mr.Adeshra, learned advocate for respondent

waives service of notice of rule on behalf of respondent.

2. The present petition has been preferred against the order dated 25th August, 2006, passed by the learned 3rd Additional Senior Civil Judge, Nadiad, below Exh.65 in Regular Civil Suit No.428 of 1998 as well as against the order passed by the said Court below Exh.70 (review application for reviewing order below Exh.65) on 24th November, 2006. In the aforesaid civil suit, by the aforesaid orders, the application below Exh.65 was dismissed. Exh.65 application was for giving exhibit numbers to the documents which are referred to by the witnesses of the present petitioners (original defendants) during their examination-in-chief and the objections have been raised by the original defendants for giving exhibit numbers to those documents which are referred to in application below Exh.65.

3. Having heard both the learned counsel and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the learned 3rd Additional Senior Civil Judge, Nadiad dated 25th

August, 2006 below Exh.65 consequently also an order passed by the said Court dated 24th November, 2006 below Exh.70 in a Regular Civil Suit No.428 of 1998 for the following facts and reasons.

3.1 It appears from the facts of the present case that the present petitioners are the original plaintiffs who filed Civil Suit No.428 of 1998 for partition of property. In examination-in-chief, an affidavit was filed by the plaintiff dated 23/27th August, 2005. Looking to the said affidavit in form of Examination-in-chief, several documents were referred to in Paras:11 and 12 thereof. Most of them are government documents and the certified copies of revenue entries, RTS proceedings, orders passed by the Deputy Collector and Collector etc. Likewise, for the second witness, as an Examination-in-chief an affidavit was filed dated 4th February, 2006 wherein also in Para-6 several documents were referred to. The cross-examination of witnesses are also over. But the documents which are referred to in both the aforesaid Examinations-in-chief of the plaintiffs were not given by the trial court. Therefore, an application was given

below Exh.65 by the original plaintiff on 21st April, 2006 with a prayer that those documents which are referred to in Examination-in-chief should be given exhibit numbers. They are government documents, certified copies and, therefore, the exhibit numbers should be given so that these documents can be referred to at the time of final hearing.

3.2 It also appears that an objection that was raised by the original defendants that the documents have not been proved, and, therefore, exhibit numbers cannot be given. The said Exh.65 application was dismissed and therefore review application was also preferred below Exh.70, but the same has also been dismissed for the reason that the documents cannot be given exhibit numbers as other side has raised objections for giving exhibit numbers.

3.3 Looking to the facts of the present case, it appears that, there is a grave error committed by the trial court, apparent on the face of the record by not giving exhibit numbers to the

documents which are referred to in examination-in-chief. They are government documents, certified copies were presented by the original plaintiffs and even if the objections have been raised by defendants for giving exhibit numbers, they ought to have been given exhibit numbers with a recording that there is objection raised by original defendants so that they may be properly heard at the time of final hearing. If the documents are not given exhibit numbers by the Trial Court and if the whole suit is deciding without giving exhibit numbers to the government documents of which certified copies are even presented before the Trial Court, and if the Appellate Court is of the opinion that the documents ought to be given exhibit numbers and they ought to have been referred to at the time of final hearing by the Trial Court, there shall be remand of the matter. To avoid this type of multifariousness of proceedings, even if it is disputed by the original defendants, looking to the nature of the documents, the Trial Court ought to have given exhibit numbers. It has been rightly relied upon by the present petitioners upon the decision reported in **(2001) 3 SCC 1**: in

case of **Bipin Shantilal Panchal v. State of Gujarat & Anr.** Paras:11, 12, 13 and 14 thereof read as under:

“ **PARA:11:-** We are compelled to say that the trial Judge should have shown more sensitivity by adopting all measures to accelerate the trial procedure in order to reach its finish within the time-frame indicated by this Court in the order dated 31-3-2000 since he knew very well that under his orders an accused is continuing in jail as an undertrial for a record period of more than seven years. Now, we feel that the Additional Judge, whether the present incumbent or his predecessor, was not serious in complying with the directions issued by this Court, though the parties in the case have also contributed their share in bypassing the said direction.

PARA:12:- As pointed out earlier, on different occasions the trial Judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the trial Court waited for days and weeks for the parties concerned to go before the higher Courts for the purpose of challenging such interlocutory orders.

PARA:13:- It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. But the fall-out of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the Appellate or Revision Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the Appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves? Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.” (emphasis supplied).

PARA:14:- When so recast, the practice

which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected documents tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. For all other objections, the procedure suggested above can be followed.” (**Emphasis Supplied**)

4. It has been held by this Court in the case of **Ceat Tyres Ltd. Bombay v. State of Gujarat & Ors.** reported in **2007(2) 1437**, more particularly **Para:5(ii)** which reads as under:-

“ **Para:5(ii)**- If at all there is any objection, for giving exhibit number to any document, the Court should record those

objections so that at the time of final hearing, the objectors can point out their objections and the trial Court may consider the same and decide evidentiary value of those documents. It is the subjective satisfaction of the trial Court whether the documents should be exhibited or not. So far as its evidentiary value is concerned, all that depends upon the totality of the evidence to be read as a whole and as a cumulative effect thereof, the trial Court may come to a conclusion as to whether facts are proved, disproved or not proved.

"..... By giving exhibits with objections recorded, to the documents, the Court is not concluding its mind. Exhibit numbers given to the documents with objections recorded, only reveal the fact that they are relevant documents. Relevancy is seen by the Court."

5. In view of the aforesaid decisions as well as the decision rendered by this Court on 29.06.2007 in Special Civil Application No.6348 of 2007 also the documents which are referred to in Exh.65 application ought to have been given exhibit numbers by the trial Court with a note that there is objection raised by the original defendants to give exhibit numbers. The modus operandi has been described in Paras:11, 12, 13 and 14 by judgment

reported in **(2001) 3 SCC 1**. Thus, there is an error apparent on the face of the record in the order passed by the Trial Court.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, the orders passed by below Exh.65 and 70 in Regular Civil Suit No.428 of 1998 are hereby quashed and set aside.

7. Rule is made absolute. Direct Service is permitted.

(D.N.PATEL, J.)

Amit/-